

FILED
DEC - 4 2017
UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re)	Case No. 16-22163-A-7
SYLVIA MAE KINERSON,)	
)	
Debtor.)	
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MICHAEL D. MCGRANAHAN,)	Adv. No. 16-02160
Chapter 7 Trustee,)	
)	
Plaintiff,)	
vs.)	
SYLVIA MAE KINERSON,)	
)	
Defendants.)	
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FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiff Michael D. McGranahan is the chapter 7 trustee in the bankruptcy case filed by debtor and defendant Sylvia Mae Kinerson. He asks that defendant Kinerson's chapter 7 discharge

1 be denied on the ground, among others, that she concealed, and
2 made a false oath in the bankruptcy case concerning, a transfer
3 of an interest in real property to her son, Stanley G.
4 Laffranchini.

5 This action was consolidated for a court trial September 6
6 and 7, 2017 with a second adversary proceeding, Case No. 16-2134,
7 in which the plaintiff seeks to avoid the transfer to defendant
8 Kinerson's son.

9 This court has jurisdiction over this adversary proceeding
10 pursuant to 28 U.S.C. §§ 151, 157, and 1334. This is a core
11 proceeding within the meaning of 28 U.S.C. § 157(B)(2)(J), in
12 which the court has the constitutional power to enter a final
13 judgment.

14
15 Findings of Fact

16 1. The subject property is located at 955 Ebbetts Avenue,
17 Manteca, California and is described as "Lot sixty-three (63), as
18 shown upon Map entitled, TRACT No. 1128, SEQUOIA HOMESITES, UNIT
19 No. 4, filed for record January 28, 1976, in Vol. 21 of Maps and
20 Plats, Page 59, San Joaquin County Records" (hereafter, "the
21 property" or "subject property"). Defendant Kinerson purchased
22 it in 1977.

23 2. Defendant Kinerson married Lawrence Kinerson in 1990.

24 3. Mick Kinerson is the only child of Lawrence. Stanley
25 Laffranchini is the only child of defendant Kinerson.

26 4. On September 5, 2000, defendant Kinerson signed a grant
27 deed transferring an undivided one-half interest in the subject
28 property to Stanley Laffranchini. This grant deed was recorded

1 on September 11, 2000. As a result of this transfer, defendant
2 Kinerson and Stanley Laffranchini each owned a 50% undivided
3 interest in the subject property as joint tenants. The plaintiff
4 does not seek to avoid this transfer.

5 5. In connection with the 2000 transfer, on September 5,
6 2000 defendant Kinerson signed a Preliminary Change of Ownership
7 Report indicating that the transfer was between a parent and
8 child. In addition, both defendant Kinerson and Stanley
9 Laffranchini signed and filed with the San Joaquin County
10 Assessor a Claim for Reassessment Exclusion for Transfer Between
11 Parent and Child. This document, signed under penalty of
12 perjury, confirmed that defendant Kinerson transferred a 50%
13 interest in the subject property to Stanley Laffranchini.

14 6. In 2003, defendant Kinerson and Stanley Laffranchini
15 established a \$183,254 line of credit with Washington Mutual Bank
16 using the subject property as collateral. In the deed of trust
17 for this loan, recorded on November 12, 2003, defendant Kinerson
18 and Stanley Laffranchini represented that they were the co-owners
19 of the subject property.

20 7. Defendant Kinerson and Lawrence Kinerson filed joint
21 federal tax returns for the years 2007 and 2008 wherein they
22 reported rental income and expenses for the subject property.

23 8. Defendant Kinerson admitted at trial that she collected
24 rent for the subject property after granting her son an interest
25 in it.

26 9. In 2010, Stanley Laffranchini filed a declaration in
27 his divorce action stating under penalty of perjury that he and
28 defendant Kinerson each were entitled to one-half of the rents

1 from the property.

2 10. The foregoing clearly indicates that defendant Kinerson
3 continued to own an undivided 50% interest in the subject
4 property after the 2000 conveyance. As a result of this
5 transfer, the defendants became co-owners of the property.

6 11. The court does not believe the testimony of defendant
7 Kinerson and Stanley Laffranchini to the effect that the 2000
8 grant deed transferred or was intended to transfer a 100%
9 interest to Stanley Laffranchini in exchange for his payment of
10 \$75,000.00 to defendant Kinerson, together with his agreement to
11 shoulder the responsibility for repaying a \$20,000 encumbrance on
12 the property. This consideration, totaling approximately
13 \$95,000, was given for a 50% interest only. And, the assertion
14 that defendant Kinerson transferred a 100% is flatly contradicted
15 by the defendants' representations to the assessor and their
16 division of the rents derived from the property.

17 12. Further, while no party introduced evidence of the
18 market value of the property at the time of the 2000 transfer,
19 the court notes that the \$183,254 line of credit obtained by both
20 defendants in 2003 strongly suggests that the \$95,000 in
21 consideration given by Stanley Laffranchini was for one-half of
22 defendant Kinerson's interest in the property.

23 13. Lawrence Kinerson died on November 7, 2009.
24 Approximately two months before he died, Lawrence Kinerson filed
25 a petition to dissolve his marriage with defendant Kinerson.
26 However, no divorce was granted prior to his death.

27 14. Lawrence Kinserson died intestate. Over defendant
28 Kinerson's objection, Mick Kinerson was appointed personal

1 representative of the probate estate (the "administrator") by the
2 Merced County Superior Court.

3 15. Defendant Kinerson filed a spousal property petition in
4 the Merced County Superior Court.

5 16. The administrator filed a petition under Cal. Probate
6 Code § 850 to confirm assets of the probate estate. Defendant
7 Kinerson's spousal property petition was consolidated for trial
8 with the administrator's petition. Cyril Lawrence, attorney at
9 law, represented defendant Kinerson.

10 17. Defendant Kinerson and the administrator were locked in
11 litigation for approximately three years. After a six-day court
12 trial conducted in November and December 2013, on July 10, 2014,
13 the Merced County Superior Court entered a judgment largely in
14 the administrator's favor.

15 18. Therefore, the Merced County Superior Court awarded the
16 administrator his reasonable attorney's fees and costs pursuant
17 to Probate Code § 859 and Welfare and Institutions Code § 15657.5
18 based upon the court's finding that "Sylvia [Kinerson] and/or her
19 son [Stanley Laffranchini] unabashedly testified at trial about
20 financial schemes involving unrecorded cash transactions,
21 manipulation of multiple bank accounts, shifting of assets and
22 potential money laundering, tax evasion, perjury, and conspiracy
23 to hide marital assets in dissolution proceedings."

24 19. On July 11, 2014, the administrator filed a Memorandum
25 of Costs in the probate case.

26 20. Over defendant Kinerson's objection, the administrator
27 was awarded costs of \$11,278.20. These costs remain unpaid.

28 21. As of July 8, 2014, the administrator had incurred

1 attorney's fees in excess of \$400,000. However, the probate
2 court has not yet determined whether defendant Kinerson must pay
3 any of these fees. This determination will be made by the
4 probate court if defendant Kinerson's bankruptcy discharge is
5 denied.

6 22. On July 28, 2014, defendant Kinerson executed and
7 recorded a second grant deed which conveyed her remaining
8 undivided 50% interest in the property to Stanley Laffranchini.

9 23. On September 9, 2014 and October 20, 2014, defendant
10 Kinerson and Stanley Laffranchini, respectively, signed a Claim
11 for Reassessment Exclusion for Transfer Between Parent and Child.
12 This document confirmed that, prior to the 2014 grant deed, the
13 property had been owned in joint tenancy by defendant Kinerson
14 and Stanley Laffranchini.

15 24. In connection with the 2014 grant deed, defendant
16 Kinerson signed an Affidavit of Exemption from Documentary
17 Transfer Tax wherein she confirmed under penalty of perjury that
18 the transfer to Stanley Laffranchini was a gift for which no
19 consideration was paid.

20 25. Defendant Kinerson admitted at trial that at the time
21 she signed the 2014 grant deed she was unable to pay any judgment
22 in favor of the administrator, whether it was for \$100 or
23 \$11,278.20.

24 26. The probate judgment was served on Cyril Lawrence on
25 July 10, 2014. Mr. Lawrence testified that it is his standard
26 practice to promptly mail judgments and other orders to his
27 clients upon his receipt of same. Mr. Lawrence further testified
28 that he mailed the judgment to defendant Kinerson and that he met

1 with her to discuss it.

2 27. Defendant Kinerson knew of the judgment when she
3 executed the second grant deed on July 28, 2014.

4 28. Mr. Lawrence is a creditor of defendant Kinerson. His
5 fees were in arrears when the second grant deed was given to
6 Stanley Laffranchini. As of that date, he was owed more than
7 \$40,000.

8 29. Defendant Kinerson appealed the July 10, 2014 judgment.
9 However, on February 22, 2016, the California Court of Appeal
10 affirmed the judgment and the award of costs to the
11 administrator.

12 30. This rather antiseptic recitation of the facts does not
13 convey the deep animosity between the administrator and defendant
14 Kinerson. Hard feelings abound and it is clear that defendant
15 Kinerson executed and recorded the 2014 grant deed for the
16 express purpose of preventing the administrator from collecting a
17 judgment, whether it was for only the costs or for the costs plus
18 his attorney's fees.

19 31. Defendant Kinerson filed her bankruptcy petition on
20 April 6, 2016, which was within two years of the execution,
21 delivery, and recording of the 2014 grant deed.

22 32. In her response to question 18 of the Statement of
23 Financial Affairs, filed on April 6, 2016, defendant Kinerson
24 indicated that she had not transferred any real property during
25 two years prior to her bankruptcy petition. She signed the
26 Statement of Financial Affairs under penalty of perjury.

27 33. At the May 3, 2016 meeting of creditors, the
28 administrator questioned defendant Kinerson about the 2014 grant

1 deed. This was when the plaintiff discovered the 2014 transfer
2 to Stanley Laffranchini. At this meeting of creditors, the
3 plaintiff instructed defendant Kinerson to file an amended
4 Statement of Financial Affairs to disclose the transfer.

5 34. On June 2, 2016, defendant Kinerson filed an amended
6 Statement of Financial Affairs. Once again she responded under
7 penalty of perjury that no transfer had been made within two
8 years of bankruptcy. However, she qualified her denial by
9 admitting a July 28, 2014 grant deed had been given to Stanley
10 Laffranchini but claiming that it "solemnized" an earlier
11 transfer on September 11, 2000 of her entire interest in the
12 property. As explained above, the earlier transfer actually
13 transferred, and was intended to transfer, only a 50% interest in
14 the property to Stanley Laffranchini. Defendant Kinerson's
15 response to question 18 in the amended Statement of Financial
16 Affairs was false and was intended to discourage the plaintiff
17 from avoiding the 2014 transfer.

18 35. In her amended Statement of Financial Affairs filed on
19 June 2, 2016, defendant Kinerson also falsely stated under oath
20 that she had used the proceeds from the sale of an annuity to pay
21 a retainer to her state court attorney, Cyril Lawrence, for legal
22 representation in possible bankruptcy litigation. Mr. Lawrence
23 testified that defendant Kinerson had not paid his such a
24 retainer. The court finds that defendant Kinerson made this
25 false statement under oath to avoid turning over these funds to
26 the plaintiff.

27 36. To the extent any of the conclusions of law below are
28 findings of fact, they are incorporated by reference as findings

1 of fact.

2
3 Conclusions of Law

4 37. To the extent any of the foregoing findings of fact are
5 conclusions of law, they are incorporated by reference as
6 conclusions of law.

7 38. The plaintiff, as the bankruptcy trustee, has standing
8 to object to the defendant's discharge. See 11 U.S.C. §§
9 704(a)(6) and 727(c)(1).

10 39. The 2014 grant deed transferred defendant Kinerson's
11 remaining undivided 50% legal and beneficial interest in the
12 subject property to Stanley Laffranchini. This was a transfer
13 within the meaning of 11 U.S.C. § 101(54)(D)(i) and (ii). Until
14 that transfer, defendant Kinerson was the owner of a 50%
15 undivided interest in the property.

16 40. Both defendant Kinerson and Stanley Laffranchini
17 attempted to argue at trial that Stanley Laffranchini became the
18 owner of 100% of the subject property as a result of the 2000
19 transfer. The court concludes otherwise. The 2000 transfer gave
20 Stanley Laffranchini only a 50% interest in the property. He
21 acquired the other 50% interest from his mother, defendant
22 Kinerson, as a result of the 2014 transfer.

23 41. "The owner of the legal title to property is presumed
24 to be the owner of the full beneficial title. This presumption
25 may be rebutted only by clear and convincing evidence." See Cal.
26 Evid. Code § 662, At trial, defendant Kinerson failed to
27 present clear and convincing evidence that the 2000 grant deed
28 transferred a 100%, not a 50%, interest to Stanley Laffranchini.

1 42. It is unnecessary, however, to rely only on the failure
2 of defendant Kinerson to rebut this presumption. The
3 circumstances clearly demonstrate that defendant Kinerson
4 retained a 50% interest after the 2000 grant deed and gave it up
5 only by executing the 2014 grant deed. See Findings of Fact, ¶¶
6 4 through 12, above.

7 43. Pursuant to 11 U.S.C. § 727(a)(2)(A), the court must
8 grant the debtor a discharge, unless "(2) the debtor with intent
9 to hinder, delay, or defraud a creditor or an officer of the
10 estate charged with custody of property under this title, has
11 transferred, removed, destroyed, mutilated, or concealed, or has
12 permitted to be transferred, removed, destroyed, mutilated, or
13 concealed - (A) property of the debtor, within one year before
14 the date of the filing of the petition."

15 44. Here, defendant Kinerson transferred her remaining 50%
16 interest in the property when she gave Stanley Laffranchini the
17 2014 grant deed more than one year before she filed her
18 bankruptcy case. Accordingly, defendant Kinerson did not conceal
19 an interest in the property from the bankruptcy trustee or a
20 creditor during the year before her bankruptcy case was filed.

21 45. Pursuant to 11 U.S.C. § 727(a)(2)(B), the court shall
22 grant the debtor a discharge, unless "(2) the debtor with intent
23 to hinder, delay, or defraud a creditor or an officer of the
24 estate charged with custody of property under this title, has
25 transferred, removed, destroyed, mutilated, or concealed, or has
26 permitted to be transferred, removed, destroyed, mutilated, or
27 concealed - (B) property of the estate, after the date of the
28 filing of the petition."

1 46. Here, defendant Kinerson transferred her remaining 50%
2 interest in the property when she gave Stanley Laffranchini the
3 2014 grant deed more than one year before she filed her
4 bankruptcy case. Accordingly, defendant Kinerson did not conceal
5 an interest in the property after the bankruptcy petition was
6 filed.

7 13. Pursuant to 11 U.S.C. § 727(a)(4)(A) the court shall
8 grant the debtor a discharge unless the debtor knowingly and
9 fraudulently, in or connection with the case, made a false oath
10 or account.

11 47. Here, defendant Kinerson, in connection with her
12 chapter 7 bankruptcy case, knowingly and fraudulently made a
13 false oath in her response to question 18 of the Statement of
14 Financial Affairs filed on April 6, 2016, wherein she indicated
15 that she had not transferred any real property during the two
16 years before filing her bankruptcy petition. Defendant Kinerson
17 signed the Statement of Financial Affairs under penalty of
18 perjury. Defendant Kinerson knowingly and fraudulently made this
19 false oath to hinder, delay, or defraud her creditors and the
20 plaintiff.

21 48. On June 2, 2016, defendant Kinerson filed an amended
22 Statement of Financial Affairs. Once again she responded under
23 penalty of perjury that no transfer had been made within two
24 years of bankruptcy. However, she qualified her denial by
25 admitting that a July 28, 2014 grant deed had been given to
26 Stanley Laffranchini but claiming that it "solemnized" an earlier
27 transfer on September 11, 2000 of her entire interest in the
28 property. As explained above, the earlier transfer actually

1 transferred, and was intended to transfer, only a 50% interest in
2 the property to Stanley Laffranchini. Defendant Kinerson's
3 response to question 18 in the amended Statement of Financial
4 Affairs was knowingly false and was intended to hinder any
5 attempt by the plaintiff to avoid the 2014 transfer.

6 49. In her amended Statement of Financial Affairs filed on
7 June 2, 2016, defendant Kinerson falsely stated under oath that
8 she had used the proceeds from the sale of an annuity to pay a
9 retainer to her state court attorney, Cyril Lawrence, for legal
10 representation in possible bankruptcy litigation. Mr. Lawrence
11 testified that defendant Kinerson had not paid such a retainer.
12 The court concludes that defendant Kinerson knowing and
13 fraudulently made this false statement under oath to avoid
14 turning over these funds to the plaintiff.

15 50. The plaintiff did not present any evidence concerning
16 the fourth claim for relief under 11 U.S.C. § 727(a)(5). There
17 is no cause, therefore, to deny defendant Kinerson's discharge
18 pursuant to section 727(a)(5).

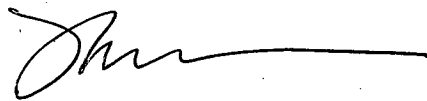
19
20 Accordingly, the court will enter a separate judgment
21 finding in favor of the plaintiff on the third claim for relief
22 pursuant to 11 U.S.C. § 727(a)(4)(A). The plaintiff is entitled
23 to no relief pursuant to the first, second, and fourth claims for
24 relief.

25 Because the defendant's discharge will be denied, the
26 plaintiff is the prevailing party and shall recover costs, other
27 than attorney's fees, from defendant Kinerson pursuant to Fed. R.
28 Civ. P. 54(d)(1) as incorporated by Fed. R. Bankr. P. 7054.

1 Counsel for the plaintiff shall lodge a conforming judgment.

2 Dated: *4 Dec 2017*

By the Court



3
4
5 Michael S. McManus
United States Bankruptcy Judge

Instructions to Clerk of Court
Service List – Not Part of Order/Judgment

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith to the parties below. The Clerk of Court will send the Order via the BNC.

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